

TO: Council Member Joe Biernat, Chair, and members of the  
Public Safety and Regulatory Services Committee of the  
Minneapolis City Council

FROM: Timothy S. Skarda, Assistant City Attorney

DATE: April 26, 2002

RE: Discretion of the City Council in the Issuance of Liquor  
Licenses.

## **INTEROFFICE MEMORANDUM**

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### **BACKGROUND**

At the February 20, 2002, meeting of the Public Safety and Regulatory Services Committee, the City Attorney was asked for an opinion regarding the discretion of the City Council in granting or denying liquor licenses, specifically whether a license could be denied to an applicant who satisfied all statutory requirements. The question arose again at the April 24, 2002, meeting.

At the February 20, 2002, meeting the question arose during a discussion of the function of public hearings held during the consideration of liquor license applications. The Committee was concerned about the role that information gleaned during the public hearing may play in the decision making process. Specifically, the Committee was concerned about situations where witnesses expressed opposition to a license, but did not provide evidence that disqualified the applicant according to statutory or ordinance provisions.

At the April 24, 2002, meeting the question arose during a discussion concerning the removal of off-street parking requirements for on-sale liquor licenses from the liquor code and transfer of all parking requirements to the zoning code.

### **STATUTES AND ORDINANCES**

Minnesota statutes provide in § 340A.402 a description of persons eligible to hold liquor licenses.

No retail license may be issued to:

- (1) a person under 21 years of age;
- (2) a person who has had an intoxicating liquor or 3.2 percent malt liquor license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the

capital stock of a corporation licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested;

(3) a person not of good moral character and repute; or

(4) a person who has a direct or indirect interest in a manufacturer, brewer, or wholesaler.

In addition, no new retail license may be issued to, and the governing body of a municipality may refuse to renew the license of, a person who, within five years of the license application, has been convicted of a felony or a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution of an alcoholic beverage.

The City of Minneapolis provides lengthy and detailed licensing requirements in Title 14 of the Code of Ordinances. The specific requirements are not within the scope of the memorandum and need not be analyzed here.

## **CASE LAW**

### **I. General standards.**

Generally, the courts have allowed a city to deny a liquor license to an applicant who satisfies all other statutory requirements. A city council has broad discretion in determining whether to issue a liquor license. *Wajda v. City of Minneapolis*, 310 Minn. 339, 343, 246 N.W.2d 455, 457 (1976).

The scope of review by the court is narrow. "In reviewing the proceedings of the municipality it is not the court's function to pass on the wisdom of the revocation, but only to determine whether the council exercised an honest and reasonable discretion, or whether it acted capriciously, arbitrarily, or oppressively." *Sabes v. City of Minneapolis*, 265 Minn. 166, 171, 120 N.W.2d 871, 875 (1963), quoted in *Miller v. City of St. Paul*, 363 N.W.2d 806, 811 (Minn. App.1985). The applicant has the burden of proving that the city council acted in an arbitrary manner. *Country Liquors, Inc. v. City Council of the City of Minneapolis*, 264 N.W.2d 821, 824 (Minn.1978).

The requirements established by ordinances are minimum standards. Unless an applicant can meet these minimum standards, the application cannot be considered at all. Where the minimum requirements are satisfied, the council must consider the application, but is by no means divested of its legislative authority and responsibility to pass upon the merits of the application. *Country Liquors, Inc.*, 264 N.W. 2d at 824.

### **II. A municipality may deny a license based upon the concerns of the community.**

The courts have provided some guidance about how to apply the general standards to specific factual situations.

In *Anton's Inc. v. City of Minneapolis*, 375 N.W.2d 504 (Minn. App. 1985) the Minneapolis City Council denied a request to upgrade a Class C on-sale liquor license to a Class B license that would have allowed dancing by patrons. The court of appeals held that there was no abuse of discretion because the city council based its decision on the character of the neighborhood and the overly intensive use of the premises that would exist in conjunction with all night special food license. The area around *Anton's* was low density residential and the establishment was in close proximity to many homes and adjacent to a park. There were some commercial buildings in the area, but they did not generate late night activity that disturbed residents. Opposition by residents whose lives would be directly affected by the establishment was clearly expressed at meetings in the community. The concern of community residents was not confined to fears of a return of the adult entertainment and parking lot fights that existed with a prior business at the location. The court believed that residents were justifiably concerned about the adverse effects on their neighborhood of entertainment in the form of live bands and dancing. Their concerns included customers in the parking lot in early morning hours disturbing residents, over parking on residential streets, litter, noise, and the increased potential for late night disturbances due to the offering of entertainment in conjunction with a special privilege to remain open all night to serve food. The court believed that the concerns were "neither fanciful, speculative, nor unwarranted merely because *Anton's* has not yet been given a chance to "prove itself" by operating with a Class B license." 375 N.W.2d at 507.

The court believed that the city council was not concerned with the applicant's personal qualifications and capabilities to manage a liquor establishment. It was concerned with the suitability of the location for entertainment and the detrimental effects of the proposed license upgrade on the neighborhood. It was not arbitrary and capricious for the city council to conclude that allowing bands and dancing, which would draw customers who would tend to stay later than restaurant-goers, and who would arrive and leave in large numbers would not be compatible with the surrounding area and would increase the likelihood of disturbances to the residents.

The court did not characterize *Anton's* as the denial of a liquor license. The city council's decision did not affect the basic privilege to sell intoxicating liquor. The city council's action was characterized as a denial of a license to conduct a particular form of entertainment in an on-sale liquor establishment

### **III. The decision to deny a license cannot be based upon the conduct of prior tenants or license holders.**

The discretion of a city to deny a license is not unlimited. The denial cannot be based upon the misconduct of the previous tenant or license holder. The denial must be based upon concerns about the current application.

In *Wajda*, the Court ruled that the Minneapolis City Council acted arbitrarily and capriciously in denying an application for a beer license on the basis of the unfitness of former licensees, since the record did not disclose that Wajda possessed any interest in the business operations of the earlier licensees or any power of control over their actions. The Court also found that the city council acted arbitrarily and capriciously in relying on a basis for denial that the premises was unsuitable for an on-sale beer establishment, since no evidence in the record indicated that the premises themselves

were inherently unsuitable as the location of a tavern if the tavern is lawfully and properly managed and operated.

However, the council may act to deny the liquor license based on "specific objections raised by community residents whose lives would be directly affected" by the proposed change. *Country Liquors, Inc.*, 264 N.W.2d at 824.

### **LEGAL CONCLUSIONS**

The City Council may exercise its discretion to deny a liquor license based on the testimony and interests of the community affected by the proposed license. The basis for a denial must be supported by specific facts related to the current application, not conduct at the premises under prior management. A denial of a license based upon specific objections raised by community residents whose lives would be directly affected by the proposed license has been affirmed.

At times it may be difficult to differentiate permissible from impermissible community objections to a proposed license. Community concerns form a permissible basis for a city council decision when the objections voiced by residents are not concerned with past misconduct associated with the operation of the license applicant's property, but the testimony is intended to demonstrate that the premises themselves are inherently unsuitable as the location for the liquor establishment, or is rationally related to an applicant's qualifications.

I have included copies of the *Wajda*, *Anton's* and *Country Liquors* case. The language of the opinions may provide additional insight into the analysis by the courts of city council actions.